

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION**

AMOS LOTT SIMMS,	§	
Institutional ID No. 2171652	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 5:19-CV-00228-C
	§	
LIEUTENANT MITZI TIMS, <sup>1</sup> <i>et al.</i> ,	§	
	§	
Defendants.	§	

**ORDER ACCEPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. Plaintiff timely filed objections.

The undersigned Senior United States District Judge has conducted an independent, de novo review of the relevant portions of the record in this case and has examined the findings, conclusions, and recommendations of the Magistrate Judge. Plaintiff's objections are **OVERRULED**. The Court **ACCEPTS** and **ADOPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that:

1. Defendants Dominguez and Tims's Motion to Dismiss (Doc. 17) and Defendant Bakenga's Motion to Dismiss (Doc. 30) are **GRANTED**. Plaintiff's claims against Defendants in their official capacities are **DISMISSED** pursuant to Rule 12(b)(1) for lack of jurisdiction.

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<sup>1</sup> The caption of this case is changed to reflect only the remaining parties and to use the correct spelling of the Defendants' names as they have appeared in this case.

2. Defendants Bakenga, Dominguez, and Tims's Motion for Judgment on the Pleadings (Doc. 32), is **GRANTED**. Plaintiff's claims against Defendants Bakenga, Dominguez, and Tims in their individual capacity are **DISMISSED** with prejudice for failure to state a claim.

3. Plaintiff's claims, if any, against Officer Rubio are dismissed without prejudice.

4. This dismissal shall count as a qualifying dismissal under 28 U.S.C. § 1915(g) and *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996).

5. Defendants' Motion for Protective Order (Doc. 21) is **DENIED** as moot.

Any relief not expressly granted is denied, and any pending motions are denied.

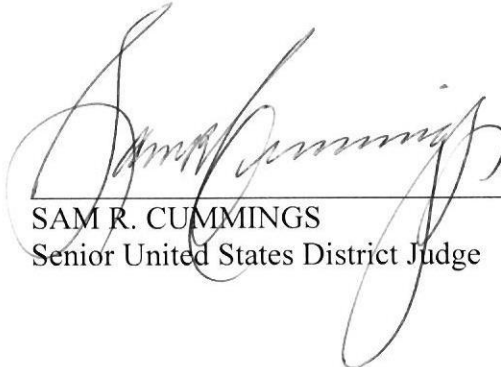
Dismissal of this action does not release Plaintiff or the institution where he is incarcerated from the obligation to pay any filing fee previously imposed. *See Williams v. Roberts*, 116 F.3d 1126, 1128 (5th Cir. 1997).

Plaintiff is advised that if he appeals this Order, he will be required to pay the appeal fee of \$505.00 pursuant to the PLRA, and he must submit an application to proceed *in forma pauperis* and a 6-month Certificate of Inmate Trust Account at the same time he files his notice of appeal.

Judgment shall be entered accordingly.

**SO ORDERED.**

Dated February 22, 2021.



SAM R. CUMMINGS  
Senior United States District Judge